88-1005

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

WANDA L. HAYNES

Petitioner,

vs.

THE SEATTLE SCHOOL DISTRICT, a quasi municipal corporation, THE SEATTLE SCHOOL DISTRICT BOARD OF DIRECTORS, THE SUPERINTENDENT OF SEATTLE PUBLIC SCHOOLS and THE PERSONAL DIRECTOR OF SEATTLE PUBLIC SCHOOLS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

LAW OFFICES OF
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QUESTION PRESENTED

Whether the Supreme Court of the State of Washington misapplied a 30 day statute of limitations in precluding a citizen from enforcing her rights under a written contract with a quasi-municipal corporation under the circumstance that Washington State statutes allows the quasi-municipal corporation 6 years to bring an action against the citizen to enforce its rights under the same contract.

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THE SEATTLE SCHOOL DISTRICT, a quasi municipal corporation, THE SEATTLE SCHOOL DISTRICT BOARD OF DIRECTORS, THE SUPERINTENDENT OF SEATTLE PUBLIC SCHOOLS and THE PERSONNEL DIRECTOR OF SEATTLE PUBLIC SCHOOLS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITIONER'S BRIEF IN SUPPORT OF GRANTING WRIT

The petitioner Wanda L. Haynes respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Washington entered in this proceeding on July 15, 1988.

OPINION BELOW

The opinion of the Washington State Court of Appeals, Division I, is reported at 49 Wn. App. 140, 741 P.2nd 580 (1987) and is reprinted in the appendix, A-31 et seq.

The opinion of the Washington State Supreme Court is reported at 111 Wn.2d 250, ____ P.2d ____ (1988). It is reprinted in the appendix, A-2 et seq.

JURISDICTION

The decision of the Supreme Court of the State of Washington was entered on July 15, 1988. Thereafter a motion for reconsideration was filed with the Washington State Supreme Court and on September 14, 1988 the Court issued an order denying petitioner's motion for reconsideration. This petition for Certiorari was filed within 90 days of

that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions and statutes relied upon include the due process clause contained in the United States Constitution, Amend. 14, Sec. 1, a Washington State Statute by which authority respondent decided to transfer petitioner and thus to breach the contract with petitioner (RCW 28A.67.073); the 30 day statute of limitations of the State of Washington which was applied (RCW 28A.88.010); the general Washington State statute of limitations for written contracts (RCW 4.16.040); and the specific State of Washington statute which enables respondent to enforce an agreement anytime within a period of 6 years (RCW 4.16.160).

STATEMENT OF THE CASE

PROCEDURAL HISTORY

This suit was commenced by filing Summons and Complaint on the 13th day of June, 1984. This suit alleged that the respondents hereto had breached its Sabbatical Leave contract with the petitioner in that upon petitioner's return to the respondent School District, the School District failed to assign her to the same or comparable position as that which she had prior to taking Sabbatical Leave.

More than 30 days had elapsed from the time the respondent made the decision that constitutes the breach of contract and the time the complaint was filed. The petitioner filed a Motion for Summary Judgment with the Trial Court and respondent filed a cross motion for Summary Judgment. The Trial Court entered an Order of Dismissal of Petitioner's Complaint and the petitioner appealed the Order of Dismissal to the Washington

State Court of Appeals.

The Washington State Court of Appeals reversed the decision of the Trial Court and the respondent herein filed a petition with the Washington State Supreme Court requesting review of the Court of Appeals decision and that petition was granted. The Washington State Supreme Court issued its opinion and petitioner thereafter filed a Motion for Reconsideration. The Washington State Supreme Court denied petitioner's Motion for Reconsideration.

FACTUAL HISTORY

Petitioner had been employed as a certified employee of the Respondent School District #1 for more than 26 years when she applied to enter a Sabbatical Leave Program promulgated by Respondent. She was accepted into the program to pursue a Doctorate of Education Degree. At the time that she entered the program,

petitioner held an administrative position. Upon her return from sabbatical leave she was transferred to a subordinate position. The Sabbatical Leave Program agreement contained the following provisos that are pertinent:

> "(g) The employee agrees to return to the corps for two years of employment following the Sabbatical Leave. Failure to return to the corps will cause return of the entire amount of the stipend to the District. If the employee leaves at the end of one year, one-half of the stipend must be returned."
>
> "(h) Employees returning from Sabbatical Leave shall normally be returned to the same position. If a change of position is requested by the employee, if the position has become non-existent, or if it is necessary to fill the position with a tenured staff member, an educator returning from Sabbatical Leave shall return to a comparable position."

Even though the petitioner successfully completed the Sabbatical Leave Program and did receive a Doctorate of Education Degree. The Superintendent of the Respondent School District pursuant to authority contained in Washington State Statute RCW 28A.67.073, transferred

petitioner to a subordinate position. That same statute provides that any administrator feeling aggrieved as a result of being transferred to a subordinate position pursuant to that statute could meet informally with the Board of Directors in Executive session and request reconsideration. That statute further provided that the decision made pursuant to that statute was final and no appeal to the Courts should lie from the final decision of the Board of Directors to transferr an administrator to a subordinate position. The respondent notified the petitioner that the Superintendent's decision to transferr her was confirmed.

The petitioner filed a claim with the trial Court for breach of contract. The respondent defended the Breach of Contract suit on two grounds:

1. The Statute Washington RCW

26A.67.073 under which the respondent Superintendent acted in transferring the petitioner to a subordinate position expressly provided that no appeal to the Courts shall lie from the final decision of the respondent Board, and;

2. A Washington State statute RCW 28A.88.010 provided that any person agrieved by any decision or order of respondent's officials or its Board must appeal to the Court within 30 days after the rendition of such decision.

Petitioner filed a motion with the Trial Court for Summary Judgment stating that as a matter of law, the respondent had breached the Sabbatical Leave Contract. The respondent filed a counter-motion based upon the affirmative defenses, supra. The Trial Court granted the Respondent's Motion and dismissed

the Petitioner's claim for Breach of Contract whereupon the Petitioner filed a timely appeal to the Washington State Court of Appeals.

THE MANNER FEDERAL QUESTIONS WERE RAISED

Petitioner herein raised the pertinent Federal questions as follows. The Trial Court dismissed the plaintiff's Complaint on the grounds that petitioner had no right of appeal pursuant to Washington Statute and secondly that Plaintiff did not file the Complaint within 30 days from the date that the decision by the respondent School District was given as required by a Washington State Statute. In the Petitioner's opening brief to the Washington State Court of Appeals, petitioner indicated that the Washington State Statute which set forth the procedure followed by the respondent School District was unconstitutional

since it denied the petitioner due process as guarenteed by the United States Constitution. Washington State Court of Appeals while not specifically and directly ruling on the Constitutional issue held that the 30 day statute of limitations applied only to judicial or quasi-judicial hearings held by the respondent's School District and since petitioner was not provided a judicial or quasi-judicial hearing, she was entitled to file her action for "Breach of Contract". Appendix A-34

Washington State Supreme Court upon review overruled the Washington State Court of Appeals and held that the 30 day statute of limitations did apply to decisions made by officials of the respondent School District. Petitioner filed a motion to reconsider and again asserted the United States Constitution, 14th Amend., Sec. 1 as

authority for its position that a 30 day statute of limitations imposed upon petitioner's claim for enforcing the contract, as compared to a 6 year statute of limitations allowed the respondent to enforce the same contract was unconstitutional. Appendix A-17

REASONS FOR GRANTING WRIT

The Washington State laws which imposes a 30 day statute of limitation on one party to a written bilateral contract but provides a 6 year statute of limitation to quasi-municipal corporation which is the other party to the written bilateral contract is violative of the due process and equal protection clause of the United States Constitution and the United States Supreme Court cases thereunder.

The right of contract enforcement is a substantial property right. Statutory classification which substantially burdens such rights as to some individuals but

not others are permissible under the Equal Protection clause of the 14th Amendment only if they are reasonable, not arbitrary and rest upon some ground of difference having a fair and substantial relation to the object of the legislation. There is no "ground of difference" that would separate and distinguish Sabbatical Leave Contracts from any other type of contract. Moreover, assuming arguendo there was such a ground of difference, there could be no justification for establishing different statute of limitations to apply to parties of the same agreement, to wit, 30 day statute of limitation for the petitioner and a 6 year statute of limitation for the respondent School District.

The effect of the Washington State's statutes as interpreted by the Washington State Supreme Court is to deny petitioner her cause of action. The 14th Amendment, Sec. 1 covers any action of

the State whether through its legislature, its Courts or its executive or administrative offices. Mooney v. Holohan, Warden, 294 U.S.C. 103, 79 L.Ed. 791 (1934). The Washington State Supreme Court's application of the Washington State statute has prevented the petitioner from exercising her right to seek a remedy for breach of contract by the respondent quasi municipal corporation. Statutory classifications which substantially burden such rights as to some individuals but not others are permissible under the Equal Protection Clause of the 14th Amendment only if they are:

> reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. Royster Guano Co. v. Virginia, 253

U.S. 412, 415, 65 L.Ed. 989, 40 S.Ct. 560 (1920).

The Equal Protection Clause of the United States Constitution does deny to states the power to legislate that different treatment be afforded to persons placed by statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. Reed v. Reed, 404 U.S. 71, 75, 30 L.Ed. 2d 225, 92 S.Ct. 251 (1971).

In the instant case respondent Board of Directors decided to transfer petitioner to a position subordinate to one that she held at the time that she executed the Sabbatical Leave Contract. Clearly contrary to their contract respondent Board made the transfer pursuant to Washington State Statute RCW 28A.67.073. Although authorized by statutes their action constituted a breach of the Sabbatical Leave Contract. The Washington

State Supreme Court in its opinion held that if petitioner was or felt aggrieved by the decision by the respondent's Board, she should have filed an action with the Court within 30 days from the date of the Board's decision pursuant to the requirements of RCW 28A.88.010. A-44

On the other hand, RCW 4.16.040 provides that an action upon a contract in writing, or liability expressly implied arising out of a written agreement has a 6 year statute of limitations. RCW 4.16.160 provides that limitations listed in chapter RCW 4.16 shall apply to actions to brought in the name or for the benefit any county or other municipality or quasi municipality of the State, the same manner as to actions brought by private parties.

There is no "ground of difference" that could possibly justify the substantial difference in the statute of limitations applicable for enforcing the petitioner's

Sabbatical Leave Contract with the respondent (30 days) vis-a-vis the statute of limitations applicable to any other contracting parties (6 years). There certainly is no "ground of difference" that would justify a statute of limitations of 30 days for the petitioner to seek a remedy for breach of the Sabbatical Leave Contract and 6 year period for the respondent District to enforce its rights under that same agreement. Such discrimination cannot be justified on any "ground of difference". It is obvious that any supposed ground of difference upon which the discrimination rested has no fair or substantial relation to any proper object sought to be accomplished. State statutes must be rationally supportable and free from invidious discrimination. Dandridge v. Williams 397 U.S. 471, 520-522, 25 L.Ed. 2d 491, 90 S.Ct. 111 53 (1970).

A state may not deprive a person of all existing remedies for the enforcment of a right which the State has no power to destroy unless there is, or was, afforded the person some real opportunity to protect it. Brinkerhoff-Faris Trust & Savings v. Hill, 50 S.Ct. 451, 281 U.S. 673, 74 L.Ed. 1107 (1930). The Washington State Court of Appeals found in the instant case that the respondent did not pursue the petitioner a quasi-judicial hearing and that the petitioner's rights under the Sabbatical Leave Contract were never adjudicated. 49 Wn. App. 140, 741 P.2d 580 (1987). A-36 Due process requires an opportunity for a hearing before a deprivation of property takes effect. Fuentes v. Shevin, 407 U.S. 67, 88, 32 L.Ed. 556, 90 S.Ct. 1983 (1972). The Washington State Supreme Court in overturning the Washington State Appellate Court opinion stated that the petitioner

should have filed her complaint within 30 days from the date that the respondent made the decision which in effect breached the Sabbatical Leave Contract Agreement. A-2 et seq.

CONCLUSION

The State of Washington through its statutes and Court opinions has placed petitioner in a class that requires her to file a claim against respondent for breach of contract within 30 days from the date the decision was made by respondent. The general statute of limitations for breach of a written agreement is 6 years. There is no ground of difference having a fair and substantial relation to the object of the legislation that would justify the disparity. Moreover, the State of Washington through its statutes and Court opinions enables respondent to have 6 years to file a claim for breach of its contract with petitioner.

Clearly petitioner has not been afforded equal protection of the law and has been deprived of due process as a result of the State action.

Petitioner Wanda Haynes respectfully asks the United States Supreme Court to grant a writ of certiorari and hear her appeal of the decision of the Washington State Superior Court.

Respectfully submitted,

LAW OFFICES OF
EDWIN S. STONE

By Edwin S. Stone
Attorney for Petitioner

THE SUPREME COURT OF WASHINGTON

WANDA HAYNES
Respondent,
v.
SEATTLE SCHOOL DISTRICT NO. 1, ET AL,
Petitioners.

NO. 54586-3
ORDER DENYING MOTION FOR RECONSIDERATION

The Court having decided by majority vote that the respondent's motion for reconsideration should be denied,

It is ordered that the motion be and it hereby is denied.

Dated this 14th day of September, 1988.

[No. 54586-3. En Banc. July 15, 1988.]

WANDA HAYNES, Respondent, v. SEATTLE SCHOOL DISTRICT NO. 1, ET AL, Petitioners.

[1] Schools -- School Board -- Judicial Review -- Time Limit -- Scope. RCW 28A.88.010, which requires an appeal from a decision of a school board to be commenced within 30 days, applies to all board decisions respecting an employment right established by contract. Describing the request for judicial relief as an action for breach of contract does not enable one to avoid the time limit for appeal.

Dore, J., did not participate in the disposition of this case.

Nature of Action: A school district employee sought damages for breach of contract 2 years after final school board action assigning her to a different job following sabbatical leave.

Superior Court: The Superior

Court for King County, No. 84-2-08376-0, Liem E. Tuai, J., entered a summary judgment on April 8, 1986, in favor of the school district.

Court of Appeals: Holding that the action was timely, the court reversed the judgment at 49 Wn. App. 140.

Supreme Court: Holding that the statutory time limit for appeals from school board decisions applied and that the breach of contract action was essentially an appeal, the court reverses the Court of Appeals and reinstates the Superior Court judgment.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WANDA HAYNES, No. 54586-3

Respondent, En Banc

v.

SEATTLE SCHOOL DISTRICT NO. 1, ET AL,

Petitioners Filed Jul 15, 1988

ANDERSEN, J.--

FACTS OF CASE

In this case, we hold that the clear 30-day statutory limitation imposed by the State Legislature (RCW 28A.88.010) on the time within which an appeal must be taken from a school board decision means what it says, and appeals taken after that time limit has expired are not timely.

An employee of Seattle School District No. 1, Wanda Haynes brought this breach of contract action against the District based on the following facts. On January 19, 1981, the employee, who

was a curriculum specialist for the 1980-1981 school year, applied for and received sabbatical leave for the 1981-82 school year. The District's "Sabbatical Leave Program" publication contained the following provision:

> Employees returning from Sabbatical Leave shall normally be returned to the same position. If a change of position is requested by the employee, if the position has become non-existent, or if it is necessary to fill the position with a tenured staff member, an educator returning from Sabbatical Leave shall return to a comparable position.

Toward the end of the employee's sabbatical year, the District Superintendent notified her that she would be transferred to a non-supervisory certificated position for the 1982-83 school year. The notice also advised the employee of her right to meet informally with the school board for the purpose of requesting reconsideration of the superintendent's decision. The employee was one of at least six administrators in the curriculum

specialist position who were transferred to other certificated positions that year.

The school board held an informal meeting on June 9, 1982 to review the superintendent's decision. On June 18, 1982, the board notified the employee in writing that it had decided to uphold the superintendent's decision, stating in part, "With respect to your sabbatical situation, the board believes the term 'comparable position' has historically encompassed the type of reassignment you are receiving."

On June 13, 1984, nearly 2 years after the school board's decision, the employee commenced this action alleging that the District breached its contractual obligation to employ her in a "comparable position" when she returned from sabbatical leave. The trial court granted the District's motion for summary judgment on alternative grounds, holding: (1) the school board's decision was not appealable

under RCW 28A.67.073 and, (2) the employee failed to appeal the school board's decision within 30 days as required by RCW 28A.88.010, thus causing her claim to be barred.

The court of Appeals reversed, holding that neither RCW 28A.67.073 nor RCW 28A.88.010 apply to the employee's action for breach of contract. The District's petition for review raises one principal issue.

ISSUE

Is the employee's breach of contract action subject to the statutory 30-day time limitation for appeals imposed by RCW 28A.88.010?

DECISION

CONCLUSION. Review of a school board's decision respecting an employment right established by contract is clearly governed by RCW 28A.88.010. The 30-day appeals time limit which the Legislature wrote into that statute thus applies to

the employee's appeal from the school board's decision in this case. The trial court did not err when it ruled that the employee's appeal was time barred when she waited almost 2 years to appeal.

RCW 28A.88.010 provides:

> Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, may appeal the same to the superior court of the county in which the school district or part thereof is situtated, by filing with the secretary of the school board if the appeal is from board action or failure to act, otherwise with the proper school official, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner the errors complained of.
>
> Appeals by teachers, principals, supervisors, superintendents, or other certificated employees from the actions of school boards with respect to discharge or other action adversely affecting their contract status, or failure to renew their contracts for the next ensuing term shall be governed by the appeal provisions of chapter 28A.58 RCW therefor and in all other cases shall be governed by this chapter 28A.88 RCW.

(Italics ours.)

Another statute, RCW 28A.88.015, further provides in pertinent part that "(a)ny appeal to the superior court shall be heard de novo by the superior court."

The language of this second statute (RCW 28A.88.015) allowing de novo review on appeal has led to some decisions by the Court of Appeals implying that the above set out statute (RCW 28A.88.010) applies only to quasi-judicial board actions, the theory being that the court does not have the power to review de novo the nonjudicial decisions or actions of an administrative body. It is true that the court may not conduct a de novo review of the nonjudicial decisions or actions of an administrative body, however, that lack of authority does not preclude the court form reviewing such actions altogether.

We recently emphasized our

adherence to principles governing review that allow limited review of nonjudicial administrative actions:

> In reviewing the law on judicial review of administrative action, the constitutional jurisdiction of the superior court on appeal from agency action is as follows: If the power exercised by an agency is essentially administrative, the superior court, upon appeal provided by statute, is limited to a consideration of whether the agency acted arbitrarily, capriciously, or contrary to law. Household Fin. Corp. v. State, 40 Wn. 2d 451, 244 P.2d 260 (1952); In re Harmon, 52 Wn.2d 118, 323 P.2d 653 (1958). If the administrative agency performs an essentially judicial function, the superior court, on appeal from a decision of the board, has, if there is a statute so permitting, the constitutional power to allow a trial de novo. Floyd v. Department of Labor & Indus., 44 Wn.2d 560, 269 P.2d 563 (1954).

Francisco v. Board of Directors, 85 Wn.2d 575, 578-79, 537 P.2d 789 (1975), quoted in Yaw v. Walla Walla Sch. Dist. 140, 106 Wn.2d 408, 413-14, 722 P.2d 803 (1986).

Application of these principles to the statute here in question, RCW 28A.88.010, leads to the same conclusions

that we recently stated in Yaw, namely that

> despite the clear language of RCW 28A.88.015, a de novo review of an administrative agency's decision is only permissible when the agency acts in a quasi-judicial manner. Review under RCW 28A.88.010 is limited to whether the agency acted arbitrarily, capriciously, or contrary to law in cases in which the agency acted in its administrative function.

(Italics ours.) Yaw, at 413. Thus, the 30-day time limit on appeals which the Legislature mandated by RCW 28A.88.010 applies to both judicial and nonjudicial actions or decisions of the school board. If the board's action appealed from is quasi-judicial, de novo review is available under the terms of RCW 28A.88.015. If, on the other hand, the board's action appealed from is nonjudicial, then the court would review only to determine if the agency acted arbitrarily, capriciously or contrary to law. Either way, the 30-day time appeal limitation is still applicable. Expressed another way, the differing scopes

of review for judicial and nonjudicial agency action do not affect RCW 28A.88.010's express time limitation for the taking of appeals.

Here, the employee waited almost 2 years to bring her appeal in superior court, far exceeding the 30-day appeal time limit. Accordingly, the employee's claim was barred by RCW 28A.88.010. The trial court, therefore, did not err when on this basis it granted summary judgment to the District.

Our decision that RCW 28A.88.010 means what is says and that the employee's appeal herein is barred renders unnecessary any detailed discussion of the type of decision made by the board and the corresponding scope of review, such as that engaged in by the Court of Appeals. However, we do note that where, as here, the school board's action encompasses a determination of an employee's rights and

liabilities under an existing contract, the action is judicial in nature and a de novo review is proper, providing that review is not otherwise barred by the statutory time limit for appeal. We also observe that "(m)erely changing the name of the action (to breach of contract) will not be sufficient to permit plaintiffs to change the forum and consequently avoid the time limit for appeal."

The decision of the Court of Appeals is reversed and the trial court's summary judgment in favor of the District is reinstated.

NO. 54586-3

SUPREME COURT

OF THE STATE OF WASHINGTON

WANDA HAYNES, Respondent,

v.

SEATTLE SCHOOL DISTRICT NO. 1,

et. al., Petitioners

MOTION FOR RECONSIDERATION

A. MOTION

Respondent moves the Supreme Court to reconsider its decision and to affirm the decision of the Court of Appeals in reversing the decision of the trial court in this cause.

B. BASIS FOR MOTION FOR RECONSIDERATION

1. RCW 28A.88.010 As Applied Is Unconstitutional and,

2. Respondent Has No Recourse Under Current Law For The Seattle School District's Breach Of Her Sabbatical Leave Contract.

C. SALIENT FACTS OF THE CASE

Respondent Haynes, as a result of her petition to the Seattle School District, entered into a sabbatical leave contract. Haynes substantially fulfilled all of her obligations under that contract, and therefore had a vested interest in obtaining benefits in a sequel contract per the terms of the sabbatical leave agreement. However, the District informed Haynes tht pursuant to the provisions of RCW 28A.67.073, her next contract would place her in a position subordinate to the one that she had prior to the sabbatical leave contract; the District's administrative decision was contrary to and in conflict with the duty owed by the District to Haynes by virtue of the sabbatical leave contract. According to the terms of the contract, Haynes was to be returned to the same or a comparable position.

The sabbatical leave contract entered into by and between the petitioner and respondent was bilateral. Unlike the other administrators in the curriculum specialist position who were transferred to subordinate positions that year, the respondent Haynes was obligated to return to the District. The applicable portion of the sabbatical leave agreement was (CP 19):

> (g) The employee agrees to return to the corps for two years of employment following the sabbatical leave. Failure to return to the corps will cause return of the entire amount of the stipend to the District. If the employee leaves at the end of one year, one-half of the stipend must be returned.

The only record resulting from the School District's administrative action was the letter from the District to respondent Haynes notifying her that she had been transferred to a subordinate position for the ensuing contract pursuant to RCW 28A.67.073

(CP 23, 24) and the letter from the petitioner District's Board informing respondent Haynes that as a result of the informal hearing held pursuant to RCW 28A.67.073, it upheld the superintendent's decision to transfer her to the subordinate certificated position (CP 24).

D. ARGUMENT

1. RCW 28A.88.010 As Applied Is Unconstitutional. RCW 28A.88.010 as applied is unconstitutional as it is violative of the Fourteenth Amendment to the United States Constitution and Washington State Constitution Article I, Section 12.

Should this court hold that petitioner Haynes has 30 days to seek recourse to the courts for the petitioner District's breach of her sabbatical leave contract, respondent Haynes would have been deprived of equal protection

under the law and due process as guaranteed by the United States Constitution, the Fourteenth Amendment and the Washington State Constitution Article I, Section 12. It is clear that had Haynes violated the agreement and in particular Section (g), supra, the District would have had a cause of action against Haynes for breach of contract. It is equally clear that the petitioner District would have six years to enforce the provisions of the sabbatical leave contract. (RCW 4.16.040)

The courts of this state have enforced provisions of a sabbatical leave agreement such as Paragraph (g), supra, of the sabbatical leave agreement between petitioner and respondent. In the case of Bellevue School District No 405, Respondent v. G. Lorraine Bentley, et al., Appellants, 38 Wn. App. 152, 684 P.2d 793 (1984) a sabbatical leave

agreement which contained the following language was enforced:

> An employee who has been granted sabbatical leave will agree to return for at least two (2) years of regular service in the District upon the expiration of her/his leave. If the employee does not return to regular service with the District, all salary paid during the leave will become immediately due and payable to the District at the expiration of such leave, except as noted below and/or except in the case that other mutually agreeable arrangements are made between the employee and the Board.

The disparity and inequality manifested by a 30 day statute of limitations for Haynes and a six year statute of limitation for the District in the same contract is blatantly and painfully clear: 30 days for the respondent Haynes to enforce a breach of the sabbatical leave contract (RCW 28A.88.010) vs. 2,162 days for the School District to enforce a breach of the same sabbatical leave agreement. (RCW 4.16.040 and RCW 4.16.160)

The ultimate question is why shouldn't a sabbatical leave contract involving an employee and a school district be subject to a six year statute of limitations not to mention apply equally to both parties to the agreement? Specifically, a person can bring an action upon a contract in writing, or liability expressed or implied arising out of a written agreement within a six year period (RCW 4.16.040). The inequity and injustice imposed by the law (RCW 28A.88.010) is beyond debate: 30 days for Haynes to bring an action to enforce her rights under the sabbatical agreement versus six years for the School District to exercise and enforce its rights under the same agreement.

It would appear that the State of Washington gives greater protection -- in giving equal protection -- in the instance when the State is a tort

feasor than when the State breaches a contract. Certainly, the scenario of constitution rights in the case of State breaching a contract is comparable ot the State being a tort feasor.

The evolution of the law with regard to limitation of actions as it pertains to nonclaim statutes for torts committed by governmental agencies should be germane for review as analagous reasoning for reaching the same result for breach of bilateral contracts by governmental agencies. The situations are considered analagous because in each, unless the agrieved party took action within a shorter period than that prescribed by the otherwise relevant statute of limitations for that type of claim, they were forever barred to enforce their claim. There is no question but what Haynes had a vested property right resulting from

the sabbatical leave agreement. The case of Hunter v. North Mason School District, 85 Wn.2d 810, 539 P.2d 845 (1975) is the case in point. In the Hunter case, the claimant failed to give the tort feasor North Mason School District a 120 day notice as required by the nonclaim statute RCW 4.96.020. In Hunter, supra, at page 814 the court states:

> ... Statutory classifications which substantially burden such rights as to some individuals but not others are permissible under the equal protection clause of the Fourteenth Amendment only if they are
>
> > Reasonable, not arbitrary, and. . . rests upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Royster Guana Co. v. Virginia, 253 U.S. 412, 415 (1920). (Cases cited.)

There is no conceiveable "ground of difference" that would justify the unconscionable disparity in time

required to enforce a citizen's rights vs. the state agency's rights under the same contract or as contracts in general. The only purpose for this special treatment given to the District is the simple protection of the District from liability for breaching its contract. Referring to nonclaim statute notice requirements, the court in Hunter, supra, at 818 states:

> Any policy of placing road blocks in the way of potential claimants against the state having been abandoned, we cannot uphold nonclaim statutes simply because they serve to protect the public treasury, absent that justification, there is no basis, substantial or even rational, on which their discrimination between governmental plaintiffs and others can be supported. They thus cannot stand under the equal protection clause of the Fourteenth Amendment of Const. Article I, Section 12. We follow a growing numer of courts in holding that the arbitrary burden placed on state claimants by this type of statute cannot withstand constitutional scrutiny (cases cited).

The United States Constitution,

Amendment XIV, Section I states:

> All persons born or naturalized in the United States and subject to the jurisdiction therof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the state; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RCW 4.16.160, Application of limitations to actions by state, counties, and municipalities states:

> The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasi-municipality of the state, in the same manner as to actions brought by private parties. . .

The legislature through enactment of RCW 4.16.160 made it clear that statute of limitations should apply equally to quasi-municipal corporations. The unjustifiable discrimination brought about by the application of RCW 28A.88.010

limiting enforcement rights of the sabbatical leave contract by Haynes should be precluded as an abridgement of constitutional rights. Certainly, in the instance of the tort nonclaim statutes, this court has ruled that a statute of limitations pertaining to torts as set forth in RCW 4.16 should apply. Tort cases involve negligent acts of omissions or commissions; in the instance where the District knows what its obligations are and intentionally decides to breach its obligation, the law should be no less accomodating to the District for its breach of contract than it is for its negligent acts of omission or commission.

Not to be overlooked, the notice given by the District clearly indicated that an informal hearing would be granted pursuant to RCW 28A.67.073 which provides in pertinent part that

there shall be no appeal to the courts. In sending the notice, neither the District nor Haynes contemplated a hearing on a sabbatical leave contract disagreement. The notification did not indicate that the Board would resolve any dispute arising out of a sabbatical leave agreement and Haynes (as many lay persons would do) mentioned the sabbatical leave agreement impromptu at the informal meeting. Under these circumstances, respondent Haynes did not receive any hearing notice of an administrative decision regarding breach of an administrative decision regarding breach of the sabbatical leave agreement, and furthermore was mislead by the notice actually given, ie. no right of appeal. Inadequate notice is violative of the United States Constitution, Fourteenth Amendment, and the Washington State Constitution Article I, Section 3.

2. Haynes Has No Recourse For The District's Breach of Contract.

As indicated in the salient facts above, the only notice that Haynes received was a notice given pursuant to RCW 28A.67.073 and the decision action taken was pursuant to that same statute. Hearings conducted pursuant to that statute are non-judicial hearings. Williams v. Seattle School District 97 Wn.2d 215, 643 P.2d 426 (1982). The only right of review that one has regarding an administrative decision by an administrative body is only to determine whether the agency acted arbitrarily, capriciously, or contrary to law. Yaw v. Walla Walla School District 140, 106 Wn.2d 408, 722 P.2d 803 (1986). In such a review, the courts will review the record of the agency since decisions made pursuant to RCW 28A.67.073 are not subject to

a trial de novo. Bishop v. Town of Houghton 69 Wn.2d 786, 793, 420 P.2d 368, (1966). In the case of the administrative decision involving Haynes, there was no record for the Superior Court to review; hence Haynes, consequently, had no basis for review of the breach of contract issue.

The legislature provided that contract disputes with school districts be resolved through procedures set forth in RCW 28A.58.450 except decisions made which adversely affect contract status pursuant to RCW 28A.67.073. When both statutes are considered, it is clear that the legislature did not intend that persons have a right of review when an administrative decision is made pursuant to RCW 28A.67.073.

E. CONCLUSION

The petitioner District has clearly attempted to abrogate the vested

rights of Haynes by intentionally breaching its contract under the guise of RCW 28A.67.073, a statute which denies Haynes access to the courts. The limited review powers inherent in the court must be petitioned within 30 days by Haynes per RCW 28A.88.010, whereas the school district has six years to enforce the same contract which is the subject matter of this disagreement, and six years for any other written contract. There is no "ground of difference" that would justify this discrimination and denial of Haynes' rights as guaranteed by the United States and Washington State constitutions.

The notice of the informal hearing did not comport due process. The notice was that an informal meeting would be held pursuant to RCW 28A.67.073; no indication was given that the District would make a decision pertaining to

the sabbatical leave contract. Such notice, or lack thereof, violates the United States constitution.

Under the scheme of things, Haynes actually was denied any access to the courts. The court, in exercising its inherent power, can only review the records pertaining to the District's administrative decision. There was no record to review regarding breach of the sabbatical leave contract by the District, which is tantamount to no review at all. Thus, Haynes was deprived of her property right without due process.

IN THE COURT OF APPEALS OF THE

STATE OF WASHINGTON

WANDA HAYNES, NO. 18289-7-I

Appellant, DIVISION I

v.

SEATTLE SCHOOL DISTRICT

et al.

Respondents. FILED: Aug 24 1987

REVELLE, J. -- In 1980, appellant Wanda Haynes was employed by Seattle School District No. 1 as one of seven curriculum specialists for the 1980-81 school year. On January 19, 1981, she applied for and received sabbatical leave for the 1981-82 school year under the following pertinent terms:

> (g) The employee agrees to return to the corps for two years of employment following the Sabbatical Leave. Failure to return to the corps will cause return of the entire amount of the stipend to the District. If the employee leaves at the end of one year, one-half of the stipend must be returned.

> (h) Employees returning from Sabbatical Leave shall normally be returned to the same position. If a change of position is requested by the employee, if the position has become non-existent, or if it is necessary to fill the position with a tenured staff member, an educator returning from Sabbatical Leave shall return to a comparable position.

(Emphasis added.)

Near the end of appellant's sabbatical, the superintendent of the school district notified her of his decision to transfer her, pursuant to RCW 28A.67.073, to a subordinate certificated position. The notification advised her of her right to meet informally with the school board to request that they reconsider the superintendent's decision.

Pursuant to her request, the school board held the statutory informal meeting on June 9, 1982. At the meeting, Haynes apparently argued

that her transfer to a subordinate position breached the District's promise to return her to "a comparable position." In rejecting this argument, the board stated that "the term 'comparable position' has historically encompassed the type of reassignment you are receiving."

Two years later, on June 12, 1984, Haynes commenced this action alleging the school district breached its contractual obligation to employ her in a comparable position. The trial court granted summary judgment for respondent on alternative grounds: (1) either the school board's decision was not appealable by express provisions of RCW 28A.67.073 or (2) appellant failed to comply with the portion of RCW 28A.88.010 requiring "any person. . . aggrieved by any decision or order of any school official or board [to appeal] <u>within thirty days</u> after the

rendition of such decision or order. . . to the superior court. . ." This appeal followed.

Appellant contends the statutes cited by the trial court are not applicable to her action for breach of contract and therefore the trial court erred in entering summary judgment. We agree.

Under RCW 28A.88.010, a teacher aggrieved by the decision of a school official or board must take appeal to superior court within 30 days of such decision. The statute only applies to school board actions which are judicial or quasi-judicial in nature. Coughlin v. Seattle School Dist., 27 Wn. App. 888, 892, 621 P.2d 183 (1980). Respondent concedes that under Williams v. Seattle School Dist., 97 Wn.2d 215,643 P.2d 426 (1982), the school board's affirmance of the decision to transfer appellant was administrative, not quasi-judicial.

Therefore, RCW 28A.88.010 does not apply to that decision. Respondent argues, however, that the school board's decision on the question of whether the transfer violated the alleged sabbatical leave contract was quasi-judicial in nature, and therefore RCW 28A.88.010 applies to that decision. We disagree.

In determining whether a particular administrative action or decision is quasi-judicial or administrative in nature, our courts have applied a four-part test. That test is whether:

> (1) the court could have been charged in the first instance with the responsibility of making the decision; (2) the function of the agency is one that courts have historically performed; (3) the agency performs functions of inquiry, investigation, declaration and enforcement of liabilities as they stand on present or past facts under existing laws; and (4) the agency's action is comparable to the ordinary business of courts.

Yaw v. Walla Walla School Distl., 106 Wn.2d 408, 414, ____ P.2d ____ (1986).

applying this test to the present case, there is no question that a court could have been charged with deciding the sabbatical contract question. Also, the interpretation of contracts is a function historically performed by the courts. However, the school board's decision on the sabbatical contract issue cannot be characterized as the application of law to specific past or present facts. There is no indication in the record that the school board applied principles of contract law to the issue. Rather, the record shows that the board merely concluded that the words "comparable position" historically (not legally) encompassed the type of reassignment appellant received. Thus, it does not appear that the board applied any law to the facts of this case. Furthermore, the informal hearing and the actions taken at the hearing

did not resemble the ordinary business of the courts. The hearing was conducted pursuant to RCW 28A.67.073, and therefore the board had broad discretionary authority and did not have to articulate reasons or justifications for its decision. RCW 28A.67.073; Williams v. Seattle School District, 97 Wn.2d 215, 220, 643 P.2d 426 (1982). thus, the action taken by the school board on this particular issue was not quasi-judicial in nature, and RCW 28A.88.010 is not appliable here.

We also disagree with respondents' argument that appellant's action is barred by RCW 28A.67.073. They argue that this statute precludes judicial action on an administrative transfer decision. However, while the statute does preclude an "appeal to the courts. . . from the final decision. . .to transfer an administrator" (emphasis

added), it does not purport to preclude an administrator's action for breach of contract. Since the present action is an action for breach of contract, not an appeal from the school board's decision, then RCW 28A.67.073 is inapplicable.

Reversed and remanded.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it jurisdiction the equal protection of the laws.

RCW 28A.67.073 **Conditions and contracts of employment--Transfer of administrator to subordinate certificated position--Procedure**

Any certificated employee of a school district employed as an assistant superintendent, director, principal, assistant principal, coordinator,

or in any other supervisory or administrative position, hereinafter in this section referred to as "administrator", shall be subject to transfer, at the expiration of the term of his or her employment contract, to any subordinate certificated position within the school district. "Subordinate certificated position" as used in this section, shall mean any administrative or nonadministrative certificated position for which the annual compensation is less than the position currently held by the administrator.

Every superintendent determining that the best interests of the school district would be served by transferring any administrator to a subordinate certificated position shall notify that administrator in writing on or before May 15th preceding the commencement of such school term of that determination,

which notification shall state the reason or reasons for the transfer, and shall identify the subordinate certificated position to which the administrator will be transferred. Such notice shall be served upon the administrator personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein.

Every such administrator so notified, at his or her request made in writing and filed with the president or chairman, or secretary of the board of directors of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the board of directors in an executive session thereof for the purpose of requesting the board

to reconsider the decision of the superintendent. Such board, upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall notify the administrator in writing of the date, time and place of the meeting at least three days prior thereto. At such meeting the administrator shall be given the opportunity to refute any facts upon which the determination was based and to make any argument in support of his or her request for reconsideration. The administrator and the board may invite their respective legal counsel to be present and to participate at the meeting. The board shall notify the administrator in writing of its final decision within ten days following its meeting with the administrator. No appeal to the courts shall lie from the final decision

of the board of directors to transfer an administrator to a subordinate certificated position: Provided, That in the case of principals such transfer shall be made at the expiration of the contract year and only during the first three consecutive school years of employment as a principal by a school district; except that if any such principal has been previously employed as a principal by another school district in the state of Washington for three or more consecutive school years the provisions of this section shall apply only to the first full school year of such employment.

This section applies to any person employed as an administrator by a school district on June 25, 1976 and to all persons so employed at any time thereafter. This section provides the exclusive means for transferring an administrator to a subordinate

certificated position at the expiration of the term of his or her employment contract.

RCW 28A.88.010 **Appeals--Notice of--Scope--Time limitation**

Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, may appeal the same to the superior court of the county in which the school district or part thereof is situated, by filing with the secretary of the school board if the appeal is from board action or failure to act, otherwise with the proper school official, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner

the errors complained of.

Appeals by teachers, principals, supervisors, superintendents, or other certificated employees from the actions of school boards with respect to discharge or other action adversely affecting their contract status, or failure to renew their contracts for the next ensuing term shall be governed by the appeal provisions of chapter 28A.58 RCW therefor and in all other cases shall be governed by this chapter 28A.88 RCW.

RCW 4.16.040 **Actions limited to six years**

Within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

(2) An action for the rents and profits or for the use and occupation of real estate.

RCW 4.16.160 **Application of limitations to actions by state, counties, municipalities**

The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: Provided, That, except as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state: And further provided, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statue may have run and become fully operative

as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such statute.